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RICHARD E. STANLEY, JR
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

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In re Application of :
VanDeRiet et al. :
Application No. 09/855,369 : **OFFICE OF PETITIONS**
Filed: May 15, 2001 : **DECISION ON PETITION**
Attorney Docket Number: :
3591-1092 :

This is a decision on the Petition under 37 CFR 1.78(a)(6), filed on December 26, 2001 (Certificate of Mailing dated October 25, 2001), to accept an unintentionally delayed claim under 35 USC 119(e) for the benefit of one or more prior filed provisional applications, numbers 60/206,204, 60/206,205, and 60/206,457, all filed on May 22, 2000, and provisional application number 60/206,255, filed on May 23, 2000.

This Petition is hereby **granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5), and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge as set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed as unintentional; and
- (3) the reference to the prior filed provisional application, supplied in an application data sheet, or as an amendment in the first sentence of the specification following the title. See 35 USC 119(e) and 37 CFR 1.78(a)(5). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed on May 15, 2001, within 12 months of the filing date of provisional applications, numbers 60/206,204, 60/206,205, and 60/206,457, all filed on May 22, 2000, and provisional application number 60/206,255, filed on May 23,

2000, and for all of which priority is claimed. A reference to the prior filed provisional applications has been included in an Amendment adding the reference to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(5). Also, the reference to the prior filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 USC 119(e).

Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6), for acceptance of an unintentionally delayed claim for priority under 35 USC 119(e), the petition to accept an unintentionally delayed claim of benefit of prior filed provisional applications, numbers 60/206,204, 60/206,205, 60/206,255, and 60/206,457 is granted as of the date of the filing of the petition.

This application is being forwarded to the Office of Initial Patent Examination for pre-examination processing and for mailing of a corrected filing receipt with a projected publication date. Afterwards, the application will be forwarded to Technology Center 3600 for processing of the Amendment filed December 26, 2001, and for consideration of the claims under 35 USC 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior filed provisional applications, numbers 60/206,204, 60/206,205, and 60/206,457, all filed on May 22, 2000, and provisional application number 60/206,255, filed on May 23, 2000.

Telephone inquiries concerning this matter should be directed to petitions attorney Derek L. Woods at (703) 305-0014.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Conferee: Frances Hicks

